



Legislative Bulletin.....May 18, 2005

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H.R. 1817—Department of Homeland Security Authorization Act for Fiscal Year 2006

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: At least 5

Total Cost of Discretionary Authorizations: \$34.15 billion in FY2006

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 1

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 1817—Department of Homeland Security Authorization Act for Fiscal Year 2006 (Cox)

Order of Business: The bill is scheduled to be considered on Wednesday, May 18th, subject to a structured rule. The amendments made in order under the rule will be summarized in a separate RSC document.

Summary: H.R. 1817 would authorize FY2006 appropriations for the Department of Homeland Security (DHS). Major provisions of the legislation, by title, are as follows:

Title I—Authorization of Appropriations

Authorizes **\$34,152,143,000** for all of DHS for fiscal year 2006. This figure is in line with the President's FY2006 budget request and the House-passed budget resolution.

Of this total amount, the bill sets the following authorizations:

- \$6.93 billion for U.S. Customs and Border Protection (including \$1.839 billion for border security and control between ports of entry, which will fund 2,000 full-time border patrol agents above the number of funded agents in FY2005).
- \$649.7 million for departmental management and operations.
- \$465.0 million for critical infrastructure protection grants and other such assistance.
- \$311.2 million for research and development (including developing chemical countermeasures, a nuclear detection office, etc.).
- \$1.06 billion for Screening Coordination and Operations of the Directorate of Border and Transportation Security (including weapons of mass destruction detection technology and container security).
- \$2.04 billion for state and local terrorism preparedness.
- \$159.5 million for the Immigration and Customs Enforcement Legal Program (including the hiring of an additional attorneys above the number of funded immigration attorneys in FY2005).
- "Sufficient sums" (paid for by increasing the related fees) to hire an additional 300 adjudicators above the number of funded adjudicators in FY2005.

Title II—Terrorism Prevention, Information Sharing, and Risk Assessment

- Requires the creation and implementation of a single process for conducting the security screening and background checks on individuals participating in five key (and potentially more) security screening programs under DHS within a year of this bill's enactment. Requires the use of biometric information "as appropriate" and procedures for protecting individual privacy.
- Requires the "routine dissemination" of terrorism-related information to each of the nation's private critical infrastructure sectors in order to prevent terrorism in such sectors.
- Directs the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection to regularly create products with specific reference to the threat of nuclear weapons and biological agents.

- Requires the creation of a process and assignment of an individual or entity of the responsibility to ensure the conducting of alternative analysis (commonly referred to as “red-team analysis”) of homeland security information that relates to potential acts of terrorism involving the use of nuclear weapons or biological agents.
- Specifies the assignments of certain functions under the authority of the Under Secretary for Information Analysis and Infrastructure Protection.
- Clarifies that, except in certain circumstance, the Secretary of Homeland Security is responsible for coordinating all homeland security threat analysis that is then provided to non-federal officials (including the private sector).
- Establishes the 9/11 Memorial Homeland Security Fellows Program, which will bring state, local, tribal, and private sector officials (with proper national security clearance and homeland security-related responsibilities in their current jobs) to become familiar with in the work of the Homeland Security Operations Center. Fellows could be paid a stipend, but regular salary and benefits would still have to be paid by each Fellow’s employer.
- Instructs the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection to ensure that the Assistant Secretary for Information Analysis receive “promptly and without request” all DHS-known information related to nuclear terrorism—and all terrorism-related information in DHS’ possession.
- Instructs the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection to develop and administer the homeland security information network so that federal, state, and local governments, tribal officials, and the private sector cab receive, analyze, and disseminate real-time information related to homeland security threats.
- Authorizes recruitment bonuses through the end of FY2008 for potential Information Analysis and Infrastructure Protection employees. No bonus could exceed 50% of the annual rate of basic pay of the position involved and must accompany a written service agreement between DHS and the potential employee.
- Allows for the continuing receipt of a Civil Service Retirement and Disability Fund annuity by a person re-employed person with the Directorate for Information Analysis and Infrastructure Protection.
- Directs the Joint Intelligence Community Council to advise the Director of National intelligence on homeland security intelligence requirements and requires that the Secretary of DHS be a member of any interagency intelligence board established by the Director of National Intelligence.
- Requires the creation of a Homeland Security Advisory System to provide national, regional, local, and economic sector (public) advisories and alerts regarding threats to

homeland security. Under this new system, the Under Secretary for Information Analysis and Infrastructure Protection would have to:

- include, in each advisory and alert regarding a threat, information on appropriate protective measures and countermeasures that may be taken in response to the threat;
 - limit, whenever possible, the scope of each advisory and alert to a specific region, locality, or economic sector believed to be at risk; and
 - refrain from using color designations**, when issuing any advisory or alert, as the exclusive means of specifying the homeland security threat conditions that are the subject of the advisory or alert.
- Directs the Assistant Secretary for Information Analysis to use open-source information as appropriate and make related reports and analyses available in an unclassified format to the public. Both this Assistant Secretary and the Assistant Secretary for Infrastructure Protection would have to “make full and efficient use of open-source information wherever possible.”
 - Sets the Assistant Secretary for Information Analysis as the official responsible for coordinating with the intelligence community.

Title III—Domestic Preparedness and Protection

- Instructs the DHS Secretary to establish a National Terrorism Exercise Program for the purpose of testing and evaluating the nation’s abilities to prevent, prepare for, respond to, and recover from threatened or actual terrorism. Lists certain desirable qualities of the Program, such as that it be multidisciplinary, realistic, and evaluated against performance measures.
- Authorizes periodic national terrorism preparedness exercises in conjunction with local first responders.
- Requires the execution of a “TOPOFF” prevention exercise, which involves top officials from all levels of governments (including international), to test and evaluate the nation’s ability to detect, disrupt, and prevent threatened or actual acts of terrorism-especially those involving weapons of mass destruction.
- Requires the completion, within 90 days of enactment of this legislation, of the Technology Clearinghouse established under the Homeland Security Act of 2002 (which created DHS).
- Creates within the Technology Clearinghouse a new technology transfer program, with the support of the Under Secretary for Science and Technology, to facilitate the identification, modification, and commercialization of technology and equipment that could be useful for governments and the private sector to prevent, prepare for, and respond to terrorism.

- Directs the DHS Secretary to review and report to Congress on all anti-terrorism acquisitions (current and future) and assess whether any such product, equipment, service, device, or technology would qualify for the litigation and risk management protections in the Homeland Security Act of 2002.
- Directs the DHS Secretary to create a university-based Center of Excellence for Border Security.
- Allows the DHS Secretary to designate foreign seaports as a participant in the Container Security Initiative (CSI) Program, pending certain conditions. DHS could deploy inspection equipment and personnel to such ports.
- Provides that containers arriving at a U.S. port from a port participating in the CSI program be subject to the same anti-terrorist screening as those arriving from non-CSI ports, subject to certain exceptions.
- Instructs the DHS Secretary to promulgate standards and procedures for securing maritime cargo containers—related especially to seals and locks for such containers. Encourages international agreements along the same lines.
- Instructs the DHS Secretary to develop a strategy to improve DHS' ability to use advance cargo information to identify (and contact shippers about) anomalies in such information to determine whether cargo poses a security risk.
- Authorizes a demonstration program for non-invasive detection equipment for container screenings at an appropriate U.S. port.
- Calls for the consolidation of all maritime cargo security programs.
- Directs DHS to deliver a security plan for general aviation at Ronald Reagan Washington National Airport within 60 days of this legislation's enactment.
- Expresses a sense of Congress that DHS implement as expeditiously as possible the initiatives assigned to the Office for Interoperability and Compatibility under current law, regarding the creation of a comprehensive, national approach to achieving public safety interoperable communications (so that first responders can communicate with each other more efficiently during an emergency).
- Directs DHS to report to Congress on how DHS will implement the Government Accountability Office's (GAO) recommendations for protecting agriculture from a terrorist attack.
- Creates an Assistant Secretary for Cybersecurity under the jurisdiction of the Under Secretary for Information Analysis and Infrastructure Protection. Authorizes this new Assistant Secretary, in conjunction with the National Science Foundation, to establish a grants program for cybersecurity training and development at higher education institutions. Reserves \$3.7 million from total DHS funds for this program.

- Directs the Under Secretary for Science and Technology to support cybersecurity research and development.
- Requires DHS to report to issue a public report on the best practices for the anti-terrorism security of public transportation systems. Instructs the Department of Transportation to develop a plan to increase public awareness of measures that can be taken to heighten public transportation security.
- Requires DHS to complete (within 90 days of this bill's enactment) its prioritization of the nation's critical infrastructure. Within nine months of this bill's enactment, DHS would have to review and make recommendations about existing private-sector and government plans to secure critical infrastructure. Exempts critical infrastructure information from certain current-law disclosure requirements.

Title IV—U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement

- Delays from September 30, 2003, to September 30, 2006, the deadline for implementing a cost accounting system for the U.S. Customs and Border Protection and expands what is required under such system.
- Requires (by September 30, 2006) an analogous cost accounting system for U.S. Immigration and Customs Enforcement.
- Reports on these cost accounting systems would have to be filed with Congress annually.
- Allows customs border patrol agents to be assigned to perform inspection services for charter flights after regular business hours.
- Expresses a sense of Congress that U.S. Customs and Border Protection should “interpret, implement, and enforce the provisions of section 112 of the African Growth and Opportunity Act (19 U.S.C. 3721), section 204 of the Andean Trade Preference Act (19 U.S.C. 3203), and section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703), relating to preferential treatment of textile and apparel articles, broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible beneficiary countries.”

Title V—Miscellaneous

- Directs DHS to report to Congress on the current organizational structure of DHS and make appropriate recommendations for restructuring. The report would have to focus on a description of the rationale for, any benefits of, and the drawbacks of the current organizational separation of United States Immigration and Customs Enforcement and

United States Customs and Border Protection, with respect to the Department's immigration and customs missions.

- Instructs GAO to report to Congress on the current organizational structure of DHS and make appropriate recommendations for restructuring.
- Requires that DHS develop a plan to improve the operational efficiency of security screening checkpoints at commercial service airports, so that average peak waiting periods at such checkpoints do not exceed 20 minutes; and to ensure that there are no significant disparities in immigration and customs passenger processing times among airports that serve as international gateways.
- Adjusts what felonies alone DHS can consider when determining whether to deny a transportation security card for port access to *exclude* felonies committed more than seven years prior to DHS' determination and felonies not related to terrorism.
- Directs DHS to transfer to the Bureau of Immigration and Customs Enforcement all functions of the Customs Patrol Officers unit of the Bureau of Customs and Border Protection operating on the Tohono O'odham Indian reservation (commonly known as the "Shadow Wolves" unit). Authorizes the creation on Indian lands of an unspecified number of additional units of Customs Patrol Officers within the Bureau of Immigration and Customs Enforcement.
- Instructs DHS to set up a procedure to collect data on aliens' use of immigration consultants.
- Renames the Office for State and Local Government Coordination as the Office for State, Local, and Tribal Government Coordination.

Additional Background: H.R. 1817 is the first DHS authorization bill to be reported to the House since the creation of DHS in the Homeland Security Act of 2002 (P.L. 107-296) two and half years ago in the wake of the terrorist attacks of September 11, 2001.

Committee Action: In late April 2005 and early May, the bill was referred to the following committees: Homeland Security, Energy & Commerce, Government Reform, Judiciary, Science, Transportation and Infrastructure, Ways & Means, and Intelligence. The following committees marked up and reported the bill: Homeland Security, Energy & Commerce, and Judiciary.

Administration Position: A Statement of Administration Policy (SAP) on H.R. 1817 is unavailable at this time.

Cost to Taxpayers: CBO confirms that H.R. 1817 would authorize **\$34,152,143,000** for fiscal year 2006.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill would create a new Assistant Secretary and at least five new programs in DHS. However, the

bill would also provide for the consolidation and streamlining of other DHS programs and authorities.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes. H.R. 1817 would exempt certain information related to critical infrastructure from state and local laws that provide public access to information. The bill contains no private sector mandates.

Constitutional Authority: The Homeland Security Committee, in House Report 109-71, cites constitutional authority in Article I, Section 8, Clause 1 (the congressional power to provide for the common defense).

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